IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 23839 of 2003

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D. Mohan .. Petitioner

Versus

1. The Presiding Officer
   Central Government Industrial
   Tribunal-cum-Labour Court
   Shastri Bhawan
   Chennai - 600 006

2. The Chief General Manager
   State Bank of India
   Local Head Office
   College Lane
   Chennai - 600 034 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari as stated therein.

For Petitioner : Mr. N.G.R. Prasad
for M/s. Row & Reddy

For Respondents : Mr. T.R. Rajagopalan, Sr. Counsel
for Mr. K.S. Sundar for R2

ORDER

The prayer in this writ petition is for a Writ of Certiorari to call for the records from the first respondent relating to I.D. No. 645/2001, quash the award dated 21.03.2003 and issue a consequential directions to the second respondent Bank to restore the petitioner to service with effect from 01.04.1997 and give him the benefit of permanency from that date.

2. The case of the petitioner is as follows:-

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The petitioner joined the service of the second respondent/Bank in December 1987 as a temporary messenger in Karunguli Branch, Chengalpet and he continued in the same branch till the end of March 1997. The second respondent denied employment to the petitioner from 01.04.1997 without taking note of the fact that the petitioner worked for a period of ten years and without retrenchment compensation or one month notice pay as contemplated under Section 25 (F) of the Industrial Disputes Act, 1947, hereinafter referred to as Act. According to the petitioner, one Madhavan, who was employed in the year 1988 was made permanent. The petitioner, having failed in all his efforts for reinstatement, raised Industrial Dispute under Section 2(A) of the Act before the Government which was referred for adjudication to the labour court. The Tribunal/first respondent herein dismissed the claim of the petitioner by passing an award on 21.03.2001. It is further stated that the Tribunal did not go into the question whether there was any violation of Section 25 F of the Act or not and also not decided how the said Madhavan, who joined the second respondent Bank one year later than the petitioner has been absorbed permanently and prayed for setting aside the award and consequently direct the second respondent to restore the petitioner in service with effect from 01.04.1997 with all attendance benefits.

3. The case of the second respondent/bank is as follows:-

The second respondent is a Statutory Banking Corporation constituted under the State Bank of India Act 53 of 1955. It has more than 9000 branches through out India. The second respondent, considering the business exigencies and efficient functioning on account of emergent needs, engaged temporary employees in subordinate cadre interalia against leave vacancies etc., There was no actual permanent vacancy of any post but only in the leave vacancy. The services of persons like the petitioner were engaged by the second respondent as and when required; that the temporary employees throughout India approached the State Bank of India Staff Federation, which in turn made a demand for permanent appointment of the employees. Pursuant to that five settlements were entered into with the Union on 17.11.1987, 16.12.1988, 27.10.1988, 09.01.1991 and 30.07.1996. The petitioner raised conciliation proceedings before the Conciliation Officer and the Government of India made a reference to the first respondent herein to conciliate - 'Whether the action of the management of State Bank of India, Chennai in denying employment to Tr. Mohan with effect from 01.04.1997 is legal and justified. If not, to what relief the said workman is entitled to? Before the Tribunal, the second respondent submitted that the petitioner was engaged as

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a casual employee for doing other miscellaneous works and not messenger work; that 744 temporary employees were wait listed and out of them 339 were appointed and the remaining 405 temporary workers were not appointed. The petitioner is junior to the aforesaid 450 employees who were engaged during the period from 01.07.1975 to 31.12.1987. In view of the interim order granted by this Court in WP No. 7872 of 1991, the supplementary list of temporary employees and the daily wager lists could not be finalised. The petitioner belonged to daily wager category and hence his name could not be considered under the first settlement. The petitioner cannot avail the benefits under the Tamil Nadu Industrial Employees Conferment of Permanent Status Act, which is not applicable to the second respondent bank, as it is a central Government undertaking. The minutes recorded before the Labour Commissioner (Central) Hyderabad is a binding settlement on the petitioner since the petitioner is only a daily wager and he cannot claim seniority over other group of 405 temporary employees who were wait listed but not appointed. The petitioner was a daily wager engaged during the year 1987, hence, he was not covered by the eligibility criteria under the first settlement. The petitioner was engaged by the Karunguli Branch in the year 1987 only for 11 days as a temporary messenger-cum-sweeper-cum-waterman. Under clause 10 of the first settlement dated 17.11.1987, there was a prohibition for engaging any temporary employee, hence, the engagement of the petitioner itself is per se unauthorised. As per clause 10, future temporary engagement was completely prohibited and in case of exigency, the engagement were permitted only from and out of the existing wait listed penal that is to be drawn under the first settlement. The petitioner has not let in any evidence before the Tribunal to prove that seniors were retained, hence, the first respondent rightly rejected the claim of the petitioner.

4. Mr. N.G.R. Prasad, learned counsel for petitioner submits that the petitioner joined the service of the second respondent/Bank in December 1987 as temporary messenger in Karunguli Branch, Chengalpet and continued there till the end of March 1997; that assuming some artificial break, it was due to the act of the second respondent bank; that during the period 1996-1997 alone taken into consideration, the petitioner completed 240 days service in 12 calendar month, which is evident from the communication dated 15.04.1998 sent by the bank; that one Madhavan, who was employed in the year 1988 and junior to the petitioner was made permanent by the second respondent; that it is no longer necessary for the petitioner to show that he has been in employment during the preceding period of 12 calendar months to qualify within the terms of Section 25-B of the Act and it is sufficient for the purposes of Section 25-B (2) (a) (ii) of the Act that he has actually worked for not less than 240 days during

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the preceding period of 12 calendar months; that the second respondent terminated the service of the petitioner without following the procedures of retrenchment stipulated under Section 25 (F) of the Act; that when Section 25-F is not followed, reinstatement to put back where the employee left off is the relief; that the Tribunal failed to follow the above said principles and prayed for setting aside the same.

5. In support of his contentions, the learned counsel for the petitioner relied on the following decisions:-

i) (Pramod Jha and others vs. State of Bihar and others) (2003) 4 Supreme Court Cases 619, wherein in Paragraph Nos. 10 and 11, it is status thus:-

> "10. We have given our anxious consideration to submission and counter-submission made before us in the light of the pleadings and undisputed documents available on record. We are of the opinion that the appeals are devoid of any merit and liable to be dismissed. The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

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11. Compliance with clauses (a) and (b) of Section 25-F strictly as per the requirement of the provision is mandatory. However, compliance with clause (c) is directory, as held in Gurmail Singh v. State of Punjab and a substantial compliance would be enough."

ii) (Surendra Kumar Verma and others vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another) (1980) 4 Supreme Court Cases 443, wherein in Paragraph No. 9 and 14, the Honourable Supreme Court held thus:-

"9. Act 36 of 1964 has drastically changed the position. Section 2(eee) has been repealed and S. 25-B(2) now begins with the clause "where a workman is not in continuous service . . . for a period of one year". These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumari and Madhu Bala are in the same position as the other appellants.

14. On the other question decided by my learned Brother I have no hesitation in agreeing that having regard to the simultaneous amendments introduced in the Industrial Disputes Act, 1947 by Act 36 of 1964 — the deletion of Section 2 (eee) and the substitution of the present Section 25-B for the original section — it is no longer necessary for a workman to show that he has been in employment during a preceding period of twelve calendar months in order to qualify within the terms of Section 25-B. It is sufficient for the purposes of Section 25-B(2)(a)(ii) that he has actually worked for not less than 240 days during the preceding period of 12 calendar months. The law declared by this Court in Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen does not apply to situations governed by the subsequently substituted Section 25-B of the Act."

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iii) (Nicks (India) Tools vs. Ram Surat and another) (2004) 8 Supreme Court Cases 222 wherein in Para-19, it was held thus:-

> "19. .....In the instant case, we have already noticed that the basic ground on which the Labour Court reduced the back wages was based on a judgment of the High Court of Punjab and Haryana which, as further noticed by us, was overruled by a subsequent judgment of a Division Bench. Therefore, the very foundation of the conclusion of the Labour Court having been destroyed, the appellant could not derive any support from the abovecited judgments of that Court. Similarly, in the case of M.P. SEB this Court only said that it is not an inevitable conclusion that every time a reinstatement is ordered, full back wages was the only consequence. This Court, in our opinion, did not conclude that even in cases where full back wages are legally due, the superior courts are precluded from doing so merely because the Labour Court has on an erroneous ground reduced such back wages. In the instant case, we have noticed that the trial court apart from generally observing that in Ludhiana, there must have been job opportunities available, on facts it did not rely upon any particular material to hold that either such job was in fact available to the respondent and he refused to accept the same or he was otherwise gainfully employed during the period he was kept out of work. On the contrary, it is for the first time before the writ court the appellant tried to produce additional evidence which was rightly not considered by the High Court because the same was not brought on record in a manner known to law. Be that as it may, in the instant case we are satisfied that the High Court was justified in coming to the conclusion that the appellant is entitled to full back wages."

iv) (Executive Engineer and another vs. Lekh Raj and another) (2005) 12 Supreme Court Cases 181, wherein in Paragraph No.3, it was held thus:-

> "3. In Civil Appeal No. 5311 of 2003 the respondent Sikander Singh raised a dispute on the ground that he was working with the appellant

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from 01-02-1993 to 14-12-1996, on which date his services were terminated without complying with the requirements of Section 25-F of the Industrial Disputes Act. In support of his contention that he has been working continuously during the said period he examined himself and reiterated the claim made by him in his petition. From the award it is seen that even though he was cross-examined, no question was asked in regard to the period of his working with the appellant management. We find management witness MW1 Sukdev Singh in his examination admitted that the workman therein had worked from 01-02-1993 to 13-09-1996 which supports the case of the workman. On the said basis the labour court by its award dated 03-08-2000 allowed the claim of the respondent workman and directed his reinstatement with full back wages."

v) (State Bank of India vs. N. Sundaramoney) 1976 (1) LLJ 478, wherein in Para-11, it was held thus:-

"11. What follows? Had State Bank known the law and acted on it, half a month's pay would have concluded the story. But that did not happen and now, some years have passed and the bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

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vi) (Deep Chandra vs. State of Uttar Pradesh and another) 2001 (3) L.L.N. 820 wherein the Honourable Supreme Court held in Para-2 thus:-

> "2. The High Court approached the matter rather strangely as it went at a tangent to consider not only whether the casual worker's services could be put an end to but if the award made by the Labour Court would make him a permanent employee, so on and so forth. The High Court lost sight of the point in issue that is when an employee had put in service for more than 240 days in each year for several years whether his services can be put to an end without following the procedure prescribed under Section 25-F of the Industrial Disputes Act. If there has been violation thereof such an employee will have to be reinstated in his original service on the same terms and conditions in which he was working earlier. If this is the position in law, we fail to understand as to how the High Court could have interfered with the award made by the Labour Court. We set aside the order made by the High Court and restore the award made by the Labour Court. The appeal is allowed accordingly."

vii) (The President, Srirangam Co-operative Urban Bank Limited vs. The Presiding Officer, Labour Court, Madurai and another) 1996 (2) LLJ 216, wherein a Division Bench of this Court held in Para-5 thus:-

> "5. From the impugned order of termination of the petitioner, it is clear that the same has been done pursuant to the direction issued by the Joint Registrar of Co-operative Societies, Tiruchy in the report made by him in RC No.14755/81-B5 (i) dated April 9, 1982. It may be pointed out here that even though the termination was made pursuant to the direction of the Joint Registrar, nevertheless such a termination was required to be made in accordance with the provisions contained in S.25F of the Act in as much as the said section does not make any difference whether the appointment has been made in accordance with law or not. The expression used in that section is "Workman employed in any industry who has been in continuous service for

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not less than one year under an employer", therefore the factum of employment is relevant and not the legality or otherwise of it."

6. Mr. T.R. Rajagopalan, learned Senior counsel appearing for the second respondent/Bank submitted that the petitioner is admittedly a daily wage employee and his termination cannot be said to have been retrenched within the meaning of Section 25-F of the Act; that the petitioner was not appointed to the post in accordance with the Rules of the Bank, but he was engaged on the basis of need of the work and therefore his disengagement from service cannot be construed to be retrenchment; that since the petitioner is a daily wage employee, he has no right to post and his disengagement is not arbitrary at all; that the averment of the petitioner that the last come goes first is not applicable to the case as the petitioner has not let in any evidence to prove the same though onus lies on him to prove and in any event, the petitioner has not proved the same; that the said question of fact cannot be canvassed by the petitioner in this writ petition; that the petitioner is aware of the nature of employment when he took it up, hence, those who were employed on a daily wage or temporary or on contractual basis cannot claim that they have a fundamental right to be absorbed in service and prayed for dismissal of the writ petition.

7. The learned Senior counsel appearing for the second respondent/bank relied on the below mentioned decisions:-

i) (Himanshu Kumar Vidyarthi and others vs. State of Bihar and others) AIR 1997 Supreme Court 3657, wherein in Para-3, it was held thus:-

"3. The admitted position is that Petitioner 1 came to be appointed as Assistant, Petitioner 2 as Driver and Petitioners 3 to 5 as Peons on different dates, viz., on 1-8-1988, 10-11-1989, 31-5-1987 and 22-4-1992. They were appointed in the Cooperative Training Institute, Deoghar by its Principal. They are admittedly daily-wage employees. Their services came to be terminated by the Principal. Calling that termination in question, they filed a writ petition in the High Court. The main grievance of the petitioners before us is that termination of their services is in violation of Section 25-F of the Industrial Disputes Act, 1947. The question for consideration, therefore, is: Whether the petitioners can be said to have been "retrenched" within the meaning of Section 25-F of the

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Industrial Disputes Act? Every department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment" therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary."

ii) (Regional Manager, SBI vs. Rakesh Kumar Tewari) 2006 (1) Supreme 151 wherein in Paragraph Nos. 13, 15, 17 and 18, it was held thus:-

"13. Section 25G requires the employer to "ordinarily retrench the workman who was the last person to be employed in a particular category of workman unless for reasons to be recorded the employer retrenches any other workman". This "last come first go", rule predicates 1) that the workman retrenched belongs to a particular category; 2) that there was no agreement to the contrary; 3) that the employer had not recorded any reasons for not following the principle. These are all questions of fact in respect of which evidence would have to be led, the onus to prove the first requirement being on the workman and the second and third requirements on the employer. Necessarily a fair opportunity of leading such evidence must be available to both parties. This would in turn entail laying of a foundation for the case in the pleadings. If the plea is not put forward such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless such a plea is raised (See Siddik Mohamed Shah vs. Mt. Saran AIR 1930 PC 57 (1); Bondar Singh & Ors. vs. Nihal Singh and Ors. (2003) 4 SCC 161).

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15. In the first appeal, the respondent had raised no allegation of violation of Section 25G in his statement of claim before the industrial tribunal. His only case was that Section 25H of the Act had been violated. Section 25H unlike Section 25G deals with a situation where the retrenchment is assumed to have been validly made. In the circumstances, if the employer wishes to re-employ any employee, he must offer to employ retrenched workman first and give them preference over others. The two sections viz. 25G and 25H therefore operate in different fields and deal with two contradictory fact situations. The Tribunal ignored the fact that there was no pleading by the respondent in support of an alleged violation of Section 25G. Indeed the order of reference by the Central Government did not also refer to Section 25G but only to Section 25H. In the circumstances it was not open to the Tribunal to "go off on a tangent" and conclude that the termination of service of the respondent was invalid because of any violation of Section 25G by the appellant.

17. The respondent's case in the first appeal of violation of paragraph 497 of the Shastri Award was wholly misconceived. That paragraph deals with the rights of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Shastri Award by the appellant in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed in appointing either of the respondents in both appeals. No condition of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely ad hoc. They had been appointed without considering any value. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with.

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18. The Tribunal also failed to deal with the issue raised by the appellant in the first appeal that no grievance had been made nor any demand raised by the respondent either in his application under Section 33C(2) or otherwise that his services had been legally terminated. It may be that the principles of res judicata may not disqualify the respondent from contending that his termination was invalid, nevertheless non raising of the issue earlier was a factor which the Tribunal should have taken into consideration in weighing the evidence. Significantly the High Court upheld the decision of the Tribunal as if the Tribunal had proceeded under Section 25H. As we have said Section 25H proceeds on the assumption that the retrenchment has been validly made. Therefore the High Court's view that the termination as invalid under Section 25H cannot in any event be sustained."

iii) (Secretary, State of Karnataka and others vs. Umadevi (3) and others) (2006) 4 Supreme Court Cases 1 (Constitution Bench) wherein in Para Nos. 39, 43, 45, 47 and 48, the Honourable Supreme Court held thus:-

"39. There have been decisions which have taken the cue from Dharwad case and given directions for regularisation, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the current decision in workmen v. Bhurkunda Colliery of Central Coalfields Ltd though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularisation or re-engagement or making them permanent.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in

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ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contact, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular

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procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them.....The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of the constitutionality

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and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was contended that the rights of the employees thus appointed under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited candidates, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a

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> right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the constitution. The right to be treated equally with the other employees on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

8. This Court considered the argument of the learned counsel for both sides and perused material records. The petitioner raised an industrial dispute challenging the act of the Second respondent denying him employment with effect from 01.04.1997. Before the Tribunal, the petitioner contended that he worked for 1682 days of service from 1987 to 1997 and the termination was made without any valid reason but on the sole ground that his services were not required. The second respondent Bank defended the said case stating that the claim of the petitioner cannot be considered; that the vacancies were less and the temporary employees were more; that in terms of the settlements, all the vacancies as on 31.12.1994 were ascertained and filled up, hence, the claim of the petitioner overriding the rights and seniority of other employees not to be accepted; that the petitioner was engaged without verifying the eligibility criteria, suitability for appointment and it was also not against the regular sanctioned vacancies. The Tribunal considering the rival contentions held that the petitioner has not placed any substantial evidence to dispute the contentions of the respondent/Bank. It is also pointed out by the Tribunal that bipartite settlements were entered into by the bank, pursuant to that wait list was prepared and the same was in operation up to some period and thereafter it lapsed. It is also pointed out by the Tribunal that the petitioner has not disputed that he was not in service during the period ending with 31.12.1987, the temporary employees who were engaged during 01.07.1975 to 31.12.1987 were all seniors to him and he is junior to 405 wait listed temporary employees of Chennai zone who were not appointed for want of vacancies. It is also the finding of the Tribunal that the petitioner has not proved with acceptable evidence that he worked for 492 days from 01.01.1992 to 31.12.1993 and was paid wages for Sundays also. It is further pointed out by the Tribunal that from

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the admitted facts available in the case, the petitioner has no right to invoke the provisions under Section 25F, 25G and 25H of the Act, besides, the conferment of permanent status Act cannot be made applicable to the Bank and dismissed the claim of the petitioner.

9. Admittedly, the petitioner was not appointed by order of appointment and no procedure, whether in Law or under any award or settlement was followed in appointing the petitioner, no condition of services were agreed to and the nature of his employment was entirely ad hoc. The grievance of the petitioner is termination of his service is in violation of Section 25-F of the Act. Admittedly, the appointments in the second respondent bank is regulated by statutory rules, hence, the concept of industry to that extent stands excluded. Followed the decision of Hon'ble Supreme Court in (Himanshu Kumar Vidyarthi and others vs. State of Bihar and others) AIR 1997 Supreme Court 3657 cited supra. Hence, the disengagement of the petitioner from service cannot be construed as retrenchment as contemplated under the Act. In other words, the concept of retrenchment cannot be stretched to such an extent as to cover the petitioner. In the same decision of the Honourable Supreme Court in Himanshu's case, their Lordships held that a person was appointed without following regulations has no right to the post and his disengagement is not arbitrary.

10. The case of the petitioner is that the second respondent/bank has absorbed the service of one Madhavan, who was junior to him, hence, his disengagement from service is contrary to the provisions of Section 25-G of the Act. Section 25-G of the Act contemplates the principle last come first go. The said Rule predicts that (i) a workman belongs to a particular category; (ii) that there was no agreement to the contrary; (iii) that the employer has not recorded any reason for not following the principles. To decide all these factors, evidence has to be let in. The onus to prove the first requirement is on the workman and the second and third requirements are on the employer. Admittedly, the petitioner has not let in any evidence to prove the same, besides that as found already, I.D. Act cannot be made applicable in this case.

11. The petitioner contended that the second respondent bank has violated the Shastri Award. Assuming that there was a violation of the Shastri Award by the second respondent, either in not issuing appointment letter or not maintaining the seniority list, service book in respect of daily wages etc., it does not mean that the petitioner was properly appointed and his services are wrongly terminated. Followed the decision of the Hon'ble Supreme Court in (Regional Manager, SBI vs. Rakesh Kumar Tewari) 2006 (1) Supreme 151 cited supra. Where no condition of services

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were agreed to and no letter of appointment was given and the employment was entirely adhoc, which was also made without considering the regulation, the petitioner is not entitled to rely upon the contents of Sastri Award, moreover, the same cannot be made applicable to the facts and circumstance of the case.

12. The rule of equality in public employment is a basic feature of our constitution and if appointment is made flouting the rules, without proper competition among qualified persons, the same would not confer any right on the appointee. Assuming the appointment is contractual appointment or daily wage or casual basis, the same would come to an end when it is discontinued. Followed the decision of the Hon'ble Supreme Court reported in (Secretary, State of Karnataka and others vs. Umadevi (3) and others) (2006) 4 Supreme Court Cases 1 (Constitution Bench) cited supra. In that decision, it was held that merely because a temporary employee or casual wage worker continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in a regular service or made permanent, merely on the strength of such discontinuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In that case, it was further held that it is not open to the Court to prevent the regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment do not acquire any right.

13. Lordships held in the decision reported in (Secretary, State of Karnataka and others vs. Umadevi (3) and others) (2006) 4 Supreme Court Cases 1 (Constitution Bench) that if the person accepts the job which is temporary or casual in nature, he accept the same with open eyes. Even assuming he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets, such persons are not entitled to say that it is not just to discontinue him from service. Even though the said person is aware of the nature of employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fall when tested on the touchstone of the constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

14. An argument was advanced by the learned counsel for the petitioner that the Honourable Supreme Court in the decision reported in (Secretary, State of Karnataka and others vs. Umadevi (3) and others) (2006) 4 Supreme Court Cases 1 (Constitution Bench), cited supra has not dealt with Section 25-F, 25-G and 25-H of the Act, hence, the said judgment cannot be made applicable to

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this case. The said argument is untenable since their Lordships have already held in that judgment that when daily wages or ad hoc appointment flouting the regulations is made, such appointment does not conferany right on the appointees and the Court cannot direct their absorption, regularisation or re-engagement and make them permanent.

15. Under Article 226 of the Constitution of India, this Court should not ordinarily issue direction for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme, merely because an employee had continued under cover of an order of the Court, which their Lordships described as 'litigious employment'. In the decision rendered by the Constitution Bench, cited supra, their Lordships also cautioned that the Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

16. When it is an admitted fact that the petitioner was engaged as a daily wager, his service was not extended further, his disengagement from service cannot be construed as retrenchment. The appointment in the second respondent bank are regulated by statutory rules, hence, the concept of industry to that extend stands excluded. The second respondent Bank entered into five settlements in respect of the employees, whose services were discontinued and accommodated them in a phased manner. It is stated that the petitioner is not even eligible to be included in the waiting list which contained 405 employees since he is junior to them.

17. In view of the above discussion and also the fact that the petitioner was appointed as a daily wage employee and his services came to an end, he is not entitled to seek the benefits of the provisions of Section 25F, 25G and 25H of the Act, which was rightly decided by the Tribunal in its award, hence, the same is confirmed.

18. In the result, the writ petition is dismissed. NO costs.

rsh

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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   Shastri Bhawan
   Chennai - 600 006

2. The Chief General Manager
   State Bank of India
   Local Head Office
   College Lane
   Chennai - 600 034

+ 1 cc to M/s. Row & Reddy, Advocate SR No.31681

+ 1 cc to Mr.K.S. Sundar, Advocate SR No.31714

TEJ(CO)
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